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**View Closed Issue - 177496**

CITY Document and Record Tracking System - Version 1.02

Friday, November 03, 2006

[Send Mail](#)[Help](#)**Issue - Created by ovincent1 on Wednesday, October 11, 2006 (Mayor)**

Sub System: MAYOR'S MAIL

Date Received: 10/10/2006

Correspondence
Date: 10/5/2006

Category: INFORMATIONAL

Source Agency: * General Public

Source Person: Bushue, Sandra K.

Address: 400 Seventh St., S.W.

City: Washington

State: DC

Zip Code: 20590

Subject: Honolulu Light Rail Project

Description: Transmittal of FTA's letter to CM Djou on subject project.

Issue Priority: Normal

☒ Allow Due Date Extension ☐ Critical

Due Date: 10/20/2006

Original Due
Date: 10/20/2006Attachments: Name
Bushue.PDF

Closed By: Istoeck on 10/16/2006 3:27:44 PM

Tasks

Closed	Assigned From	Action Requested/Task Description	Due Date
<input checked="" type="checkbox"/>	Mayor	Your information and file	10/20/2006
10/11/2006 10:59	dtsreceptionist (DTS)	Assigned to Chang, Deanna(dchang DTS)	
10/11/2006 10:59	dtsreceptionist (DTS)	Assigned to Ballesteros, Mercy(mballesteros DTS)	
10/11/2006 10:00	ovinent1 (MAY)	Assigned to Moriwaki, Jane K(jmoriwaki DTS)	
10/11/2006 10:00	ovinent1 (MAY)	Assigned to Fasi, Gina(gfasi DTS)	
10/11/2006 10:00	ovinent1 (MAY)	Assigned to DTS Receptionist(dtsreceptionist DTS)	

TP10/06-177496R

November 2, 2006

Ms. Sandra K. Bushue, Deputy Administrator
Federal Transit Administration
U. S. Department of Transportation
400 Seventh St., S.W.
Washington, D.C. 20590

Dear Ms. Bushue:

Thank you for your October 5, 2006 letter, transmitting a copy of your September 25, 2006 letter to Councilmember Charles K. Djou regarding the City's award of the contract to Parsons Brinckerhoff Quade and Douglas, Inc. and the subcontract to Community Planning and Engineering.

We appreciate the Federal Transit Administration's (FTA's) confirmation that there was no wrongdoing in the procurement of the professional services required for the Honolulu High-Capacity Transit Corridor Project. The discussion of the requirements applicable to this procurement included in your letter provided a clear explanation of the FTA's position in this matter. We thank you for your efforts on our behalf.

With warm regards and aloha,

Yours truly,

Mufi Hannemann
Mayor

mb (F. Miyamoto)



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<input type="checkbox"/>	Mayor	Your information and return	10/20/2006
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U.S. Department
of Transportation
**Federal Transit
Administration**

Deputy Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

OCT - 5 2006

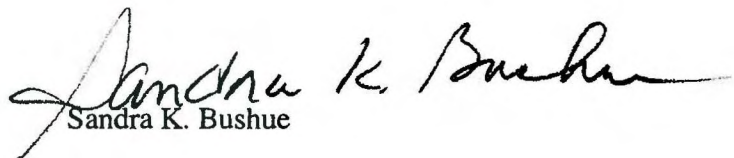
The Honorable Mufi Hannemann
Mayor
City and County of Honolulu
530 South King Street, Room 3003
Honolulu, Hawaii 96813

Dear Mayor Hannemann:

Thank you for your letter dated July 28, 2006. It was a pleasure meeting you in my office last June. I appreciated the briefing on the Honolulu light rail project and your enthusiasm to lead this effort.

I am enclosing a copy of my recent letter to Councilmember Djou, regarding the City's award of the professional services contract to Parsons Brinckerhoff Quade & Douglas, Inc., and the subcontract awarded to Community Planning & Engineering, which is self explanatory. As always, should you or your staff have any questions regarding the Federal requirements applicable to the project alternatives under study, please do not hesitate to call on our Regional Administrator, Leslie Rogers, and his staff in our San Francisco regional office at (415) 744-3133.

Sincerely,


Sandra K. Bushue

Enclosure



U.S. Department
of Transportation
**Federal Transit
Administration**

Deputy Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

SEP 25 2006

The Honorable Charles K. Djou
Councilmember, District IV
City and County of Honolulu
Honolulu, Hawaii 96813-3065

Dear Councilmember Djou:

Thank you for your letter dated June 30, 2006, requesting that the Federal Transit Administration (FTA) "investigate" the City of Honolulu's award of a professional services contract to Parsons Brinckerhoff Quade & Douglas, Inc. (PBQD), for preparation of an Alternatives Analysis and Draft Environmental Impact Statement (AA/DEIS) for high-capacity transit improvements on Oahu, and PBQD's award of a subcontract to Community Planning & Engineering (hereafter, "CP&E") to perform community outreach in support of the AA/DEIS. You complain specifically that the City of Honolulu "may have wasted" Federal funds by awarding the PBQD contract "without cost considerations, contrary to the requirements of 49 U.S.C. § 5325," and "may have abused" its authority by requiring PBQD to "divert nearly \$900,000" to a "politically-connected subcontractor" (*i.e.*, CP&E) that was "never evaluated by the source selection committee" and did not compete for its work in support of the AA/DEIS. As you know, however, the Inspector General of the U.S. Department of Transportation (USDOT) has reviewed these matters and declined to take any action. It is clear, also, that you misunderstand the requirements applicable to the City's procurement of these professional services; thus, I will take a moment to summarize those requirements.

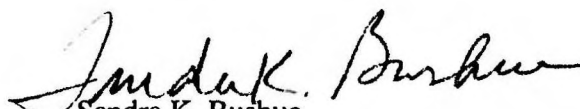
In brief: Procurements funded by FTA are governed by USDOT's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (the "Common Grant Rule") codified at 49 C.F.R. Part 18. Consistent with both the Brooks Architect-Engineers Act, 40 U.S.C. §§ 1101 *et seq.*, and FTA's authorizing statute at 49 U.S.C. § 5325(b), the Common Grant Rule calls for negotiation and award of contracts for architectural and engineering services on the bases of demonstrated competence and qualifications for the type of professional services needed. Specifically, Section 18.36(d)(3)(v) of the Common Grant Rule allows FTA grantees to use competitive proposal procedures for qualifications-based procurements of architectural and engineering professional services contracts, such as AA/DEIS studies, where competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Expressly, price is *not* used as a selection factor. Indeed, FTA reiterates this point in the Third Party Contracting Guidelines set forth in the agency's Circular 4200.1E, which require that price be excluded as an evaluation factor. The City awarded its prime contract to PBQD strictly in accordance with these principles.

Likewise, the award of the subcontract to CP&E was consistent with the pertinent Federal and State rules. Section 18.36(b)(1) of the Common Grant Rule allows grantees to use their own procurement procedures reflecting applicable State and local law and regulation, providing those procedures conform to applicable Federal standards. On October 11, 2005, Mr. Reid Yamashiro, Deputy Corporation Counsel of the City and County of Honolulu, rendered an opinion that the City was within its legal authority under Hawaiian State statute and the Hawaii Administrative Rules to procure the services of CP&E as a subcontractor to assist the general consultant, PBQD, in preparing the AA/DEIS. By letter of November 3, 2005, addressed to your fellow Councilmember, Mr. Todd Apo, the City's Department of Transportation Services explained the development of the community outreach component of its contract with PBQD and the business reasons for procuring the services of CP&E to bolster the City's efforts to obtain public, civic, and community participation in the preparation of the AA/DEIS. FTA has no reason to question either the legal opinion by Mr. Yamashiro or the City's letter to Mr. Apo, nor does FTA find any arbitrary action in the procurement of CP&E's services.

Furthermore, Section 18.36(b)(12)(i) of the Common Grant Rule provides that alleged violations of State and local law applicable to FTA-funded procurements lie within the jurisdiction of State and local authorities. As you know, Communications Pacific, Inc., brought suit to contest the award of the subcontract to CP&E, but on April 13, 2006, Judge Hifo of the State of Hawaii's First Circuit Court dismissed that suit, ruling that a subcontractor on a government contract cannot bring litigation for judicial review outside the procedures for government contracts set by the State's Procurement Code. You note that Communications Pacific had previously filed a petition with the Hawaii Procurement Policy Board, but I am informed that the Board declined to entertain that petition, and I find nothing in the enclosures to your letter relating to that petition that warrants FTA intervention in accordance with the Common Grant Rule.

Most recently, the Mayor of Honolulu has written to me providing his own views of this matter, thus, I am providing the Mayor a copy of this letter.

Sincerely,



Sandra K. Bushue

cc: The Honorable Mufi Hannemann